



September 28, 2001

Ms. Cara Leahy White  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2001-4362

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152530.

The Work Advantage, which you represent, received a request for “the Boys and Girls Club proposal for Management of the Youth Opportunity Center.” Although the Work Advantage does not raise any exceptions on its own behalf, you contend that the request may implicate the proprietary rights of a third party—the Boys and Girls Clubs of Greater Fort Worth, Inc. (“the Boys and Girls Club”). Accordingly, you indicate that you notified the Boys and Girls Club of the request under section 552.305 of the Government Code. In turn, the Boys and Girls Club submitted briefing to this office in which it contends that the requested information is excepted from public disclosure under section 552.104 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations. Open Records Decision No. 592 (1991). Thus, section 552.104 protects the interests of governmental bodies, not third parties. *Id.* Because the Work Advantage does not raise section 552.104, this section is not applicable to the Boys and Girls Club’s proposal. *Id.* (Gov’t Code § 552.104 may be waived by governmental body). Therefore, the Boys and Girls Club’s proposal may not be withheld under section 552.104.

Nevertheless, we note that the submitted information contains a social security number that may be confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision

- No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the proposal is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, which we have marked, the Work Advantage should ensure that it was not obtained or maintained by the Work Advantage pursuant to any provision of law, enacted on or after October 1, 1990.

We further note that the submitted information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137, recently added to the Public Information Act by the Seventy-seventh Legislature,<sup>1</sup> provides “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” We have marked the e-mail addresses that must be withheld under section 552.137.

In summary, the social security number contained in the submitted documents may be confidential under the federal Social Security Act. The Work Advantage must withhold the marked e-mail addresses under section 552.137 of the Government Code. However, the Work Advantage must release the remainder of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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<sup>1</sup>Act of May 14, 2001, 77<sup>th</sup> Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 614; *see also* Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., ch. 545, § 5, 2001 Tex. Gen. Laws 974, 975 (adding this exception as § 552.136).

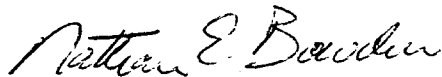
- governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 152530

Enc: Submitted documents

c: Ms. Carlela K. Vogel  
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(w/o enclosures)